

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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LAMONT B. SIMMONS
MELISSA R. SIMMONS
Plaintiffs,

vs.

Case No. 08-6263-SCR

ROUNDUP FUNDING, LLC
MALEN & ASSOCIATES, P.C.
Defendants.
-----X

**REPLY AFFIRMATION IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION TO REARGUE**

I, Joshua N. Bleichman, counsel for the Plaintiffs herein, affirm under penalty of perjury, state that I have knowledge of the following and state the same is true except for those matters stated "upon information and belief" and as to those matters, I believe them to be true.

1. This Reply Affirmation is submitted in further support of Plaintiffs, Lamont B. Simmons and Melissa R. Simmons, to re-consider the Order of this Court granting summary judgment and awarding costs and fees, dated September 22, 2009.
2. Defendants allege that they did not violate the Fair Debt Collection Practices Act (FDCPA). Plaintiff maintains that the FDCPA was violated based upon the fact that Defendants attempted to collect a debt which they were not entitled to in direct violation of 15 U.S.C. § 1692e(2). (overstating the amount owed violated FDCPA Cacace vs. Lucas, 775 F.Supp. 502 (D.Conn. 1991). Defendants overstated the amount owed when they filed their excessive proof of claim in the Bankruptcy Court.
3. Although the debt was listed as a claim in Plaintiff's bankruptcy schedules, the Bankruptcy Court treated the listing as an admission of liability and reduced the overstated Proof of Claim to that listed in the

bankruptcy schedules. The Bankruptcy Court made no ruling regarding any FDCPA violations because it does not have jurisdiction to hear FDCPA claims. Only this Court has jurisdiction to hear FDCPA claims.

4. The complaint was not filed to harass the defendants; only to enforce the FDCPA violations, not addressed by the Bankruptcy Court.

WHEREFORE, it respectfully requested that the Court grant the application to reconsider and allow Plaintiff's case to go forward or alternatively not award fees and costs against Plaintiff or its counsel and for such other relief as the Court may consider just and lawful.

Dated: October 14, 2008
Spring Valley, New York

/s/ Joshua N. Bleichman
Joshua N. Bleichman
Law Office of Bleichman and Klein
268 Route 59
Spring Valley, New York 10977
(845) 425-2510
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Joshua N. Bleichman, an attorney admitted to practice in this court affirm under the penalties of perjury that I am not a party to this action and that I am over the age of 18 years old. I am associated with the Law Office of Joshua N. Bleichman, PC located at 268 Route 59, Spring Valley, New York, 10977 and I served the within Motion to Reconsider on October 14, 2009, by depositing a true copy thereof in an post-paid wrapper, placing it in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, to:

Paul W. Mahler
Malen & Associates, PC
123 Frost Street, Suite 203
Westbury, New York 11590

/s/ Joshua N. Bleichman
Joshua N. Bleichman